PUBLIC PROSECUTOR v. HUSSAIN & ANOR.

[R.Cr.J. (Ong Hock Sim J.) August 4, 1969]

[Penang — Criminal Revision No. 11 of 1969]

Fisheries — Trawling outside demarcation area — Charge of contravening boat licence by — Licence not produced — No offence constituted by statute or regulations — Plea of guilty to charge which does not state offence — Revision — Fisheries Act, 1963, ss. 2 & 4.

Criminal Law and Procedure — Charge which does not state offence — Plea of guilty to — Revision.

The accused had pleaded guilty to the charge of contravening one of the conditions of their boat licence, to wit by trawling outside the demarcation area. No regulations had been made by the Yang di-Pertuan Agong to demarcate any area for any particular type of fishing. The boat licence referred to in the charge was not produced at the trial.

Held: (1) in the absence of any regulation made by the Yang di-Pertuan Agong demarcating any area for any particular type of fishing, the charge was bad in law and disclosed no offence;

(2) in the circumstances, despite the plea of guilty, the court would exercise its powers of revision and quash the conviction.

CRIMINAL REVISION.

Abu Mansor bin Ali (Deputy Public Prosecutor) for the Public Prosecutor.

Ong Hock Sim J.: The two accused persons were charged:—

"That you on 22nd day of February, 1969 at 11.00 a.m. at the sea 4 miles off Muka Head, Telok Bahang, in the District of Balik Pulau, in the State of Penang, being the master of fishing vessel No. GT. 2455, did contravene one of the conditions of the boat licence, issued by the Fisheries Department, Penang, to wit, by trawling outside the demarcation area, and that you have thereby committed an offence under section 4(2) punishable under section 13(1) of the Fisheries Act 8/63."

An amended charge was framed against the 2nd accused namely:—

"That you on 22.2.69 at about 11.00 a.m. at the sea 4 miles off Muka Head, Telok Bahang, in the District of Balik Pulau, in the State of Penang, being the person in charge of the trawler net of fishing vessel No. GT. 2455, did contravene one of the conditions of the boat licence, issued by the Fisheries Department, Penang, to wit, by trawling outside the demarcation area, and that you have thereby committed an offence under section 4(2) punishable under section 13(1) of the Fisheries Act 8/63."

To these charges both accused pleaded guilty.

Facts given showed that this boat GT. 2455 was trawling in a certain area, the position and bearing of which were taken by the marine inspector and found to be 4 miles from Muka Head. He thereupon arrested them. He sold the 3 piculs of fish for $6 and the only exhibit produced is the auction receipt (P.1) for the amount of $6. Nowhere in evidence is this so-called boat licence produced nor is there any evidence to indicate whether the particular area where this boat was found was outside any demarcation area as it appears that no area has been demarcated pursuant to section 2(f) of the Fisheries Act 1963, which reads:—

"The Yang di-Pertuan Agong may make regulations relating to maritime and estuarine fishing and fisheries to prescribe the areas in maritime and estuarine waters and the periods of time in the year within which any particular method of fishing is prohibited or restricted."

In the absence of any regulation made by the Yang di-Pertuan Agong demarcating any area for any particular type of fishing, the charge is bad in law and discloses no offence.

There is an allegation of a breach of a condition of a boat licence and the court has been referred to section 4(1) of the Fisheries Act, which reads:—

"A licensing officer may, subject to the provisions of this Act and of any regulations or rules made thereunder, issue to any person a licence, on such terms and conditions as he may specify, exempting him from any prohibition or obligation imposed by the provisions of this Act or any regulations or rules made thereunder."

Section 4(2) which is the offence alleged against the two accused reads:—

"A licensing officer may attach to a licence such conditions as the Director or Fishery Officer may deem to be appropriate."

That, to my mind, does not create any offence. It merely empowers the licensing officer to issue a licence and to attach any conditions thereto and in this respect I would refer to *Maxwell* on Interpretation of Statutes, (11th Edn.) at page 253:—

"The rule was founded, however, on the tenderness of the law for the rights of individuals and on the sound principle that it is for the legislature, not the court, to define a crime and ordain its punishment."

I do not see that any crime or offence has been ordained by the words of section 2 nor is there a sanction or punishment under any section of the Fisheries Act for non-compliance with any conditions which the fishery officer may attach to any licence issued by him.

It is equally clear that the charge is also wrong in referring to a boat licence. I do not see that any fishery officer has any power to issue a boat licence. He can issue a licence to an authorised or licensed boat for any form of fishing but not a boat licence. GT. 2455 would be issued by the Marine Department rather than by the fishery officer. The charge further referred to punishment under section 13(1) of the Fisheries Act, which reads:—

"Any person who does or attempts to do an act contrary to, or fails to comply with, the provisions of this Act or any regulations or rules made thereunder shall be guilty of an offence and shall on conviction, if no special penalty is provided, be liable to a fine not exceeding one thousand dollars or to a term of imprisonment not exceeding one year or to both."

Reading the charge, I can see that no provision in the Act has been contravened by the accused. No regulation made under section 2 or any rule under section 3 of the Act has been referred to which the accused are alleged to have failed to comply with. It seems to me that despite a previous case where I had occasion to set aside the conviction and ordered the return of the net to a trawler fisherman convicted a year or two ago, the fisheries department has not taken any action to regularise their actions with a view to controlling fishing or to fill the *lacunae* in existing law. I am told that there are many similar cases still pending at Telok Bahang.

The two accused pleaded guilty and section 299 of the Criminal Procedure Code says:—

"When an accused person has pleaded guilty and been convicted by a district court or police court on such plea there shall be no appeal except as to the extent or legality of the sentence."

The footnote to this section (*Mallal's* Criminal Procedure 3rd Edn. page 355) says:—

"A prisoner, who pleaded guilty to a charge which states no offence in point of law, and against whom the evidence also disclosed no offence, was permitted to appeal against the conviction, and sentence thereby following, and such conviction was quashed. [*Municipal Commissioners* v. *Chuah Seng and ors.* 2 Ky. (M.A.) 140. See also *Deya Singh* v. *de Cruz*, 1 S.S.L.R. 147].

Plea of guilty to what is not an offence does not bar the accused person of his right of appeal. A plea of guilty to what is not an offence is no plea at all. [*R.* v. *Lim Soh Chwee and anor.*, Cr. App. (Singapore) No. 3 of 1911].

Where an accused person has been convicted by the magistrate on his own plea of guilty and is precluded from appeal against the legality of the sentence under this section, the appellate court can always in a proper case exercise its powers of revision under the Criminal Procedure Code [*Lee Yu Fah* v. *Public Prosecutor* [1937] M.L.J. 179.]"

This, I propose to do.

In regard to the second charge, I have also this observation to make, namely, that non-production of the licence in proof of the condition of the licence which he is supposed to contravene namely, as alleged, trawling outside the demarcation area, is fatal as there is no evidence that 4 miles from Muka Head is outside any demarcation area. Section 4(2) does not create any offence. The charge was also bad in law in the absence of express prohibition and any regulation under section 2 prescribing demarcation for the areas where trawler fishing may be permitted or rules by the State authority under section 3.

The first charge was against both accused but the amended charge was only in respect of the 2nd accused. I am not able to say if the 2nd accused was convicted also on the first charge but on the record a fine of $60 was imposed on the 1st and the 2nd accused. It does not appear what verdict was given on the second charge or whether any conviction or sentence was imposed on 2nd accused.

From the foregoing I am satisfied that no offence in law is disclosed and I accordingly set aside the conviction of both accused and direct that the fine of $60 imposed be refunded. I also direct that the sum of $60, which has been confiscated to revenue, be refunded to the accused. I may add $6 for 3 piculs of fish seem to be an unduly low price and wonder if perhaps this is lending encouragement to the victimisation of fishermen and I hope investigation would be made as it has been admitted there are numerous similar cases.

Conviction set aside, fine imposed refunded.

BOARD OF GOVERNORS OF SEKOLAH MENENGAH ST. GABRIEL v. RANJIT SINGH

[A.C.J. (Raja Azlan Shah J.) August 5, 1969]
[Kuala Lumpur — Civil Appeal No. 23 of 1969]

Practice and Procedure — Stay of proceedings pending declaratory suit in High Court — Discretion — principle applicable.

The appellants had filed a claim in the Sessions Court against the respondent for ejectment. The respondent had been employed as a watchman by the appellants and his services had been terminated. The respondent had been allowed in consequence of his employment to occupy a portion of the school premises rent free. In his defence the respondent alleged wrongful dismissal and averred that he was seeking a declaration to that effect in the High Court. The respondent filed a suit in the High Court for a declaration that the purported dismissal was *ultra vires* and null and void. He therefore applied to the Sessions Court for a stay of the proceedings and the learned president allowed the application.

Held, allowing the appeal: the learned president in this case had exercised his discretion on the wrong principle and in the light of all the relevant circumstances including the onus of proof, the fairest mode of trying the several disputes in this case would be for the action to proceed in the Sessions Court.

Cases referred to:—

(1) *Thomas* v. *The South Eastern Railway Co.* (1882), 9 Q.B.D. 320, 335.

(2) *Ramsbottom* v. *Snelson* [1948] 1 K.B. 473.

(3) *Thomson's (Funeral Furnishers) Ltd.* v. *Phillips* [1945] 2 All E.R. 49.

(4) *Kamuning (Perak) Rubber & Tin Co. Ltd.* v. *Abraham* [1965] 1 M.L.J. 20.

(5) *Anglo-Oriental Plantations Ltd.* v. *D'Cruz* [1967] 1 M.L.J. 83.

(6) *Francis* v. *Municipal Councillors of Kuala Lumpur* [1962] M.L.J. 410.

(7) *Addis* v. *Gramophone Co. Ltd.* [1909] A.C. 488.